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September 3, 2013

VIA E-FILING AND FIRST-CLASS MAIL

The Honorable Jerome B. Simandle, Chief Judge
U.S. District Court, District of New Jersey
Mitchell H. Cohen Building & U.S. Courthouse
4th & Cooper Streets, Courtroom 4A
Camden, NJ 08101

**Re: Fred Adami v. Cardo Windows, Inc., et al.
Civil No. 1:12-02804 (JBS/JS)**

Dear Judge Simandle:

As suggested by your Chambers, we write as counsel to defendants to respectfully request permission to file a sur-reply brief of up to 10 pages in response to Plaintiffs' Reply Brief in Support of Plaintiffs' Motion for Conditional Certification of an FLSA 'Opt-in' Collective Action and Certification of a Rule 23 'Opt Out' State Wage Class Action," filed on August 27, 2013.

This sur-reply is necessary to address new information raised for the first time in plaintiffs' reply brief, including:

- Providing defendants' response to the five-page list attached as Exhibit A to the reply, which was never produced during discovery or at any time prior to being filed with the Court. It is rank hearsay, not verified by anyone with personal knowledge of its contents, and is filled with inaccuracies.
- Correcting plaintiffs' new argument, raised for the first time in the reply brief, that the National Labor Relations Act prohibits class action waivers. Defendants will cite numerous decisions of the Courts of Appeal that have rejected this position, but which were not noted by plaintiffs.
- Responding to plaintiffs' argument, raised for the first time in the reply brief, that Cardo Windows has somehow waived arbitration for putative class members who are not yet party to this action, which has not yet been certified as a class action or conditional collective action.

The Honorable Jerome B. Simandle

September 3, 2013

Page 2

- Challenging plaintiffs' claim – supported only by plaintiffs' counsel's vague "limited research" and attachment of unexplained forms from "New Jersey Business Gateway" – that the corporations that provided services for Cardo Windows are somehow not "independent companies."
- Rebutting plaintiffs' misinterpretation of the New Jersey Department of Labor and Workforce Development audit, which was cited in defendants' original opposition.
- Responding to the "single employer/joint employer" argument raised for the first time in the reply brief.
- Correcting the record as to plaintiffs' final argument, which relies on the testimony of only one witness, ignoring the ample record of the industry standard for use of independent contractors for window installation, which was cited in defendants' response.

We greatly appreciate the Court's kind consideration of this request, which we hope will assist the Court in properly deciding the motion.

Respectfully submitted,

FLASTER/GREENBERG P.C.



Michael D. Homans

cc: Richard S. Hannye, Esq. (via email only w/o encl.)